

The Maasai Intellectual Property Initiative: a 20th-century model for turning assets into income

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Abstract

The names and images of indigenous people such as the Maasai, Cherokee and Navajo are used to advance the intangible value of thousands of products from cars to shoes and luxury brand clothing across the globe. The Maasai name or image are used on over 1,000 products. This article highlights a decade of work to enable the Maasai tribe of Kenya and Tanzania, of over 2 million tribal people, to receive sustainable income from the use of their name and image by creating a win-win situation. We describe how the Maasai have been organised into a legal entity called the Maasai Intellectual Property Initiative Trust (MIPI), to own and receive income from their Intellectual Property. Secondly, we describe a definitive strategy to enable the Maasai to grant certification to companies and to license approved users. This atypical model of Fair Trade would enable a sustainable source of revenue to the Maasai who live largely in deep poverty. The strategy is not dissimilar, albeit atypical, to what a well-known individual such as Charlie Chaplin or a product such as Coca Cola would do – own, protect and benefit from their iconic brand that adds value. The initiative has implications for other indigenous people who comprise about 6 per cent of the global population.

Keywords: intellectual property; Maasai; indigenous peoples; certification; Fair Trade; license; exploitation; branding; brand value; social responsibility

Can Fair Trade models work for indigenous groups? Consider that Fair Trade was once itself dubbed 'atypical' but is now considered the ethical norm, drawing upon the consumer's desire to shop in ways that are more fair and sustainable for low-income producers. This piece will demonstrate an 'atypical model' of applying the Fair Trade concept to the Maasai tribe of roughly 2 million, a highly recognised indigenous tribal group whose name and image are being used by about 1,000 companies without financial return to the Maasai. This initiative was designed to enable a win-win strategy, helping the Maasai to achieve reasonable licensing income for their iconic brand and enabling companies to do the right, ethical thing. Atypical, but possible.

The names and images of indigenous people, such as the Maasai, Cherokee, Navajo and Tourag, are used to advance the intangible value of thousands of products, from cars to luxury clothing across the globe, such as the Maasai Barefoot Technology shoes, Jeep Cherokee or Maasai Land Rover. The Maasai name, for example, adds intangible value to products branded Maasai or the names would not be utilised with such frequency.

But first, what is intangible value? Products from Coca Cola to Microsoft and Apple rely upon their brand image to sell products. In Coca Cola, consumers buy 'happiness in a bottle'. Jaguar Land Rover released a powerful marketing campaign (Figures 1 and 2), which shows the Maasai brand value. We are grateful to



Figure 1 Maasai lined up to advertise Maasai Jaguar Land Rover

© Jaguar Land Rover



Figure 2 Land Rover advertisement featuring Maasai

© Jaguar Land Rover

Jaguar Land Rover for returning the Trademark to the Maasai and hope the Maasai may have further opportunity to work with them in the future. The intangible value of products is often of higher value than the physical components.¹ Consider the difference between a Pink branded tie and generic; or Kate Spade shoes and generic, or Michael Jordan sneakers and generic. Sometimes, the higher quality is obvious, yet often the difference is in brand value. Intangible value can be calculated by brand and IP experts who do so routinely for companies.

Our global research found that over 1,000 companies add the names Maasai to their products.² Why do they do so? Marc Mathieu, who has held senior marketing director roles at Samsung, Unilever and Coca Cola has consulted with us to better understand the intangible value brought by the Maasai. Their names and images evoke values such as authenticity, freedom, adventure, courage and strength – all adding value to a product, sometimes transforming that product from ordinary to extraordinary. Consider, for example, a Maasai bag on the market for \$2,400 that may seem rather ordinary if created without the Maasai name or company who manufactured it as generic on a Manhattan street corner.

Consider a company such as Maasai Barefoot Technology (MBT). We are promised we can ‘walk like the Maasai’ if we purchase a shoe based on the design of walking heel first. MBT shoes sell on average for \$150.00–\$200/pair, producing annual revenue of nearly \$1.3 billion in sales. Accordingly, the company has done well and should be applauded, but should any of this value be given to the Maasai as it is their name and image and walking style, developed over centuries that is the foundational image of this successful company?

This is not an idle question, but one that has legal precedent. If I were to create a Charlie Chaplin labelled shirt or walking stick, the Chaplin family would receive a licensing fee, standard at 5 per cent, even though the iconic star is long deceased. If an iconic walk of an actor who brought us great joy is worth a licensing fee, should the use of a Maasai name, with a far deeper, longer culture history established, be taken for granted and ‘free?’ The implications are large: a simple license fee (3–5 per cent) to utilise the Maasai name and image would seem fair and would provide a sustainable revenue to the Maasai people, overcoming their challenges from Kenyan and Tanzanian equatorial climate and change, and most importantly awarding them an ownership for something that has been cultivated for centuries – their iconic culture. Furthermore, there are implications for all indigenous people, who comprise about 6 per cent of the global population.

In 2008, Ethiopian fine coffee farmers regained control of their trademarks and licensing after organising allies and challenging Starbucks owner, Howard Schultz. The trademark had been acquired by Starbucks but was returned to the Ethiopian coffee farmers and a licensing strategy put into place for Ethiopian coffee farmers. This well documented effort brought a return of \$101 million to the Ethiopian coffee farmers as Intellectual Property assets.^{3 4}

Coffee is a tangible export. The idea of a tribal people being awarded income for their brand name and image is different, but not unprecedented. Attorney Michael Frankel achieved an indigenous people’s Intellectual Property success with the aboriginal people of Australia. The aboriginal people’s ‘brand’ was considered in the public domain, but Mr Frankel enabled the aboriginal people to gain an element of power as to when and where the aboriginal images could be used. To this day, if an image of the aboriginals is used, the aboriginal people have won the right to have it removed.⁵ However, we seek more than the meritorious goal of removal of offensive images, but a strategy to enable the companies using the Maasai name and image to benefit, whilst returning the industry standard of 3–5 per cent licensing fee to the Maasai.

1 Light Years IP, *Distinctive values in African products*. London: DfID, 2009.

2 Brindle, M. & Layton, R., *Social entrepreneurship for development: A business model*. Abingdon: Routledge, 2017. And research conducted by David Cardwell, founder Copyright Promotions Limited and for establishing many famous IP licensing strategies such as Star Wars.

3 Heran, Sereke-Brhan, Ethiopia: Coffee, culture and IP: Lessons for Africa from the Ethiopian Fine Coffee Initiative. Boston University, July 2010. World Intellectual Property Organisation, Ethiopia’s Fine Coffee Trademarking Initiative, CSRWire release 16263.

4 World Intellectual Property Organisation, Ethiopia’s Fine Coffee Trademarking Initiative, CSRWire release 16263, 2007 (https://www.csrwire.com/press_releases/16263-ethiopia-s-fine-coffee-trademarking-initiative-at-millennium-turning-point).

5 See Michael Frankel lawyers (frankellawyers.com.au/sydney-indigenous-arts-lawyers).



Figure 3 Chief Isaac ole Tialolo, Chair Maasai IP Initiative (MIPI)

LightYears IP

While presenting the Ethiopian coffee success described above at the World Economic Forum, Ron Layton, CEO of the US charity LightYears IP, was tapped on the shoulder by a Maasai leader in attendance (Figure 3). The Maasai asked:

You obtained the Ethiopian coffee farmer's intellectual property for them and they gained. The Maasai names and images are used everywhere. We are even lined up in the shape of cars, called Maasai cars to better market these to your country. Can you help us to gain control of this?

Some may consider this situation a 'lost cause' as the Maasai name has sometimes been argued to be in the 'public domain' by those incentivised to use it without cost, and the Maasai have indeed lost control over their own cultural brand. A feasibility study, funded by Comic Relief, was conducted to ascertain if the answer to Maasai question could be affirmative, and it was and is.⁶ The Maasai can regain control of their name.

The next question became: how do we reclaim an asset for a tribe of over 2 million that has been used to add value to 1,000+ companies? We began by following common practice and precedents for the world of intellectual property assets. David Cardwell, our IP consultant, oversaw the licensing strategy for Star Wars; my Little Pony; Teenage Ninja Turtles and other famous brands. Star Wars IP revenue outpaced even the revenue for the famous movies. Licensing norms are typically considered to be 10 per cent of the revenue for new licences and 5 per cent for existing users. For example, if the Maasai Barefoot Technology (MBT) company, selling \$1.3 billion+ in Maasai shoe sales annually provided a 5 per cent licensing to the Maasai as would happen if MBT were using any other famous person's name and image, this would amount to \$61

⁶ P. Tiffen and R. Layton, *Maasai feasibility study*. London: Comic Relief, 2010.



Figure 4 Maasai looking at Maasai IP workbook, photo of Louis Vuitton fashion show

Light Years IP

million. If a modest 1% were provided to the Maasai, \$13 million would go a long way to demonstrate genuine fair trade to the Maasai and the world. The MBT could readily market this strategy as good corporate social responsibility (CSR).

First, the Products Must be Researched and Assessed

It is important to consider what is the value added using the Maasai name or image brings to companies. Obviously, a company such as Jaguar Land Rover or Louis Vuitton have their own excellence in meticulous design; branding; marketing and positioning quite independent of adding a Maasai name and image (Figure 4). Yet, a product with Maasai attached, such as a fountain pen, selling in generic form at a company might be \$US 45.00 but labelled Maasai Fountain pen, rockets up to \$250.00. Our study performed in concert with Maasai i Boniface ole Keis, found the products, and assessed the most lucrative segments: cars; higher end clothing and luxury goods with the greatest opportunity to return income to the Maasai at 1–3 per cent licensing.⁷

Secondly, the Owners of the Intellectual Property Must be Legally Organised

The Maasai IP Initiative (MIPI) involved organising Maasai across Kenya and Tanzania, drawing leaders from the 12 tribes (Figure 5). Using a train-the-trainer's model, working through chiefs and leaders, extensive radio broadcast for awareness-raising, followed by intensive two-day trainings with certificate of training awarded, the Maasai, over four years achieved the legal entity, MIPI (officially registered as the Maasai IP Initiative Trust). The Maasai have a Constitution and an elected board representing the Maasai fairly from both countries of Kenya and Tanzania. MIPI is inclusive and transparent, with women on the board and Maasai attorneys, to be in compliance with Kenyan and Tanzanian law.

A critical component of the Maasai Constitution is stipulating how revenue will be used. It demonstrates a decision-making process and designation for community projects. We have also been careful to meet at the border town between Kenya and Tanzania to show inclusion and equality of Tanzanian and Kenyan Maasai equally represented.

⁷ Companies using the Maasai name and image ROI. Light Years IP, 2012. Updated by INSEAD MBA project course, 2017. Brindle & Layton, The power of the brand. In *Social entrepreneurship for development* (pp. 175–202).



Figure 5 Tanzanian Maasai Mamma and elders receiving certificate of IP training

Light Years IP

Third, Design Strategy to Bring Awareness to Companies and to Negotiate Win-Win Solutions

In our view, it is unproductive to merely complain about the misuse. Rather, we draw upon the Fair Trade approach that assumes that many companies can marry the objectives of ‘doing good and doing well’ and hold ethical foundations. We believe that companies recognise that the Maasai name and image adds value to their products. They can be shown how to augment this value by applying for and receiving a Maasai stamp of approval and licence described below. Tribal people deserve the same licensing percentage (5 per cent standard) as a famous person. Charlie Chaplin’s name and image cannot be used on any product anywhere in the world without the Chaplin family permission and a licensing agreement with returns. Why should a famous tribal brand such as the Maasai be worth less?

Fourth, Design a Support Organisation to Support and Advocate When Needed such as the African IP Trust (africaniptrust.com)

Low-income producers and tribal people are often taken advantage of and are in need of advocacy. It has taken some time for the indigenous people’s brands to become taken for granted, used widely without permission and considered ‘public domain’, and thus it will take some advocacy to change the norm. Our interest is not merely to complain, but to enable the Maasai to receive normal licensing revenue, in a win-win strategy with companies benefiting from their name, and hopefully enable those companies to benefit further as they can announce, market and benefit from an atypical but fair strategy normative to business of receiving a Maasai Certification Mark and media attention.

Our entity, the African IP Trust, negotiates on the behalf of low-income producers and owners of indigenous people such as the Maasai. For example, in bringing the Maasai to London, the BBC featured the new Maasai initiative and raised awareness.⁸ The Maasai website will enable companies to apply to be Maasai certified and receive a Maasai stamp of approval in exchange for a modest licensing fee. The law firm Hogan Lovells have worked with the Maasai Initiative via several TM partners and offered pro bono support, to facilitate licensing and legal soundness, in a manner that supports the win-win solution.

⁸ Hebblethwaite, C., Why nomads might trademark their name, BBC, 28 May 2013.

What does a Fair Trade Version of This Product Look Like?

When we think of fair trade, we think that fair prices are paid to producers in developing countries (when trading with developed countries). We think that producers are protected from exploitation in global supply chains, and working conditions are fair, safe and without child labour.

In a globalised world of outsourced supply chains and pressure to keep prices low, Fair Trade provides transparency and reassurance to the consumer that these items are sold at fair prices, without exploiting producers in developing countries. When we cannot directly see who is making something and how, the certification label reassures the consumer that the supply chain has been reviewed and is held to certain standards.

So, what does a fair trade version of the Maasai IP look like? The Maasai IP does not directly relate to one product. For the 1000+ companies that use the Maasai brand to enhance the value of their products, the companies are not typically using the Maasai as producers. The Maasai have not been consulted or included in the discussion of how or where these products are made.

We believe that the fair trade version of the Maasai brand can be found in a similar certification for consumers, using a stamp that aims to provide the same type of reassurance and transparency as the Fair Trade certification, preventing exploitation of the Maasai brand.

These 1000+ companies have an opportunity to engage with the Maasai and license their IP through this stamp. In doing so, companies can bring income to a whole population of indigenous people, while creating and selling the same products they currently do. A licence will enable brands to authentically make use of the Maasai brand while compensating the Maasai for what belongs to them in a fair and transparent way.

This stamp that represents the Maasai brand can be displayed on the products and used in marketing and CSR messages by companies using the Maasai name and image. Not only would this provide authentic use of the brand image, but it would encourage consumers to look out for the stamp. Ideally, we would like consumers to ask the brands using the Maasai name and image, 'how much of this goes to the Maasai?' and for companies to be able to confidently answer, '5 per cent as per our license fee, the sale of this line of product has contributed X thousands of dollars to the Maasai IP Initiative, you can read more about it here'. A Maasai stamp would act as a certification for positive impact.

While we want to encourage transparency in consumption, what about fairness in production? The original producers of the image and brand are the Maasai, through their deep historic culture, but many of these companies do not engage with the Maasai for production. So can our licence provide different levels of interaction, from a basic level of branding and marketing, all the way to a full production line?

We believe it can. What is the difference in value between something, a scarf say, produced by or designed by, the Maasai people, versus a corporate designer in the US or manufacturer in China? By engaging with the Maasai through the Maasai IP Initiative, there is unlimited potential to collaborate and innovate with the Maasai. Not only does IP offer a chance for companies to compensate the Maasai, but this can also open opportunities for the more typical Fair Trade model of production, by collaborating to ultimately generate job creation and further income.

Instead of looking at cheap labour prices and costs, why not look at the intricacy, rarity and detail that the Maasai can bring to production in these items. For those who have been lucky enough to visit the Maasai Mara, they may have bought a few bracelets or items of jewelry for very low prices. However, should it not be more expensive to have something made by the Maasai, rather than in a number of different factories in a global supply chain?

To the 1000+ companies using the Maasai brand, the certification is your chance to authenticate your work – we encourage you to engage with the Maasai IP Initiative for the benefit of the Maasai as well as your products and consumers.

In a 'fairer world', assets would belong to and benefit the people who have produced those assets and own them. This seems straightforward, yet throughout Africa arguably the largest contributor to poverty is that

African farmers and producers work hard to create products that are high quality, even distinctive and receive in many cases 3–5 per cent of the value those products achieve at retail.

In our view, there is little to be gained by complaining about the unfairness. The question is: how do we improve this for some of the poorest people on the planet in ways that are in harmony with business?

The prospect for the Maasai involves a two-fold process:

1. To enable companies to apply to the Maasai IP initiative and be awarded a Maasai stamp of approval that will become recognised; as described above; and
2. To pay a normal licensing fee to the Maasai for their value-added to those Maasai approved products.

The largest challenge for the Maasai Initiative is the same as any new endeavour, from the creation of the light bulb or the first steel bridge, once thought impossible, to Fair Trade, itself. People say it cannot be done, because it has not been done – yet. This challenge is augmented by the taken for granted nature of using indigenous peoples' brands wholesale. Just because Louis Vuitton can put on a fashion show featuring Maasai inspired clothing and sell Maasai labelled shirts for 1,200 EU and Maasai shukas for 800 EU with nothing back to the Maasai doesn't mean this pattern should continue. It would benefit Louis Vuitton, for example to receive the Maasai stamp of approval, as LV consumers and stakeholders can 'feel better' about buying these products, and will come to award companies who treat their suppliers and producers well, as they assert doing – even indigenous peoples. Even Chaplin Chaplin might nod his cane to this!

Finally, this atypical Fair Trade model has enormous implications for other indigenous people and an opportunity to set a precedent. It can respect and honour the companies using the cultural brand whilst creating a modest revenue for the people who served to create that value. There are approximately 476 million indigenous people worldwide, in over 90 countries. Although they make up over 6 per cent of the global population, they account for about 15 per cent of the extreme poor with a 20-year lower life expectancy.⁹ The Cherokee are the second largest tribal group in the US. The brand, Jeep Cherokee, in production since 1974, has sold over 4 million units. The Cherokee group publicly owns brands that generated over \$4.0 billion in sales.¹⁰ While a full discussion of implications for other indigenous people is beyond the scope of this short piece, one can see the implications of a reasonable licensing programme that credits the indigenous people's brand and value added to companies.

Our hope is buoyed by the myriad of companies on the planet responding to stakeholders, wanting to do well and do good, and to find new opportunities to do both. It is possible and desirable to create something more beautiful from two beautiful brands: a company seeking to do well and honour the cultural brand + the Maasai, an iconic, strong culture highlighting courage, strength and respect. We assert that the Maasai tribe might also be considered a stakeholder, the tribe which enables the values of courage, authenticity and strength to be associated with a Louis Vuitton item. We are creating a win-win strategy wherein the Maasai certificate or stamp of approval would benefit the companies, showing they have provided a modest but impactful licensing to the Maasai – a benefit to their customers; the Maasai; and the company owners. On a pragmatic level, the Maasai IP Initiative is working with Time Partners, a strategic advisory firm based in London, is represented by Hogan Lovells law firm and is supported by the African IP Trust partners. A website will soon allow companies to apply for a licence to use the Maasai certification mark.

⁹ World Bank, *Indigenous Peoples*. Washington, DC: World Bank, 24 September 2019.

¹⁰ Brindle & Layton, *Social entrepreneurship for development* (p. 200), based on research by P. Tiffen, 2009.